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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA,	:	
	:	<b>CONSENT DECREE</b>
Plaintiff,	:	
	:	
v.	:	14 Civ. <u>0340</u> ( <u>KPF</u> )
	:	
NEDERLANDER ORGANIZATION, INC.,	:	
	:	
Defendant.	:	
	:	

----- X

WHEREAS, the United States of America (the "Government") commenced this action to enforce provisions of Title III of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12181 *et seq.*, and the Department of Justice regulations implementing Title III of the ADA, 28 C.F.R. Pt. 36 (the "Regulations"), and the ADA Standards for Accessible Design, consisting of 28 C.F.R. Pt. 36, App. D (the "1991 Standards"); and Appendices B and D to 36 C.F.R. Pt. 1191 (2009), and the requirements contained in subpart D of 28 C.F.R. Pt. 36 (the "2010 Standards"), against Nederlander Organization, Inc. ("Nederlander") with respect to the following theaters:

(a) the Brooks Atkinson Theater, built in 1926, and located at 256 West 47th Street;

(b) the Gershwin Theater, opened in 1972, and located at 222 West 51st Street;

(c) the Lunt-Fontanne Theater, built in 1910, remodeled in 1958, and located at 205 West 46th Street;

(d) the Marquis Theater, opened in 1986, and located at 211 West 45th Street;

(e) the Minskoff Theater, opened in 1973, and located at 1515 Broadway;

(f) the Nederlander Theater, built in 1921, and located at 208 West 41st Street;

(g) the Neil Simon Theater, built in 1927, and located at 250 West 52nd Street;

(h) the Palace Theater, opened in 1913, and located at 1564 Broadway; and

(i) the Richard Rodgers Theater, opened in 1924, and located at 226 West 46th Street;

all in New York, New York (collectively, the “Theaters,” and each individual theater being the “Theater”);

WHEREAS, the Complaint in this action, filed on January 17, 2014 (the “Complaint”), alleges that Nederlander violated Title III of the ADA (a) by failing to remove architectural barriers to access at the Theaters where such barrier removal is readily achievable, or, where such barrier removal is not readily achievable, by failing to make goods and services at the Theaters available through readily achievable alternatives to barrier removal, see 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. § 36.304(a); (b) by failing to make reasonable modifications to policies, practices, or procedures at the Theaters, including providing individuals with disabilities equal access to tickets, see 42 U.S.C. § 12182(b)(2)(A)(v); and (c) by failing to have a reasonable number of wheelchair seating locations, companion seating locations, and designated aisle transfer seats that are dispersed throughout the seating areas, that are readily accessible to, and usable by, individuals with disabilities, and that provide lines of sight comparable to persons without disabilities, see 28 C.F.R. §§ 36.308;

WHEREAS, the Complaint alleges that the Theaters are places of public accommodation within the meaning of 42 U.S.C. § 12181(7) because their operations affect commerce, and the Theaters are facilities that include a theater, bars that serve food or drink, and merchandise concession facilities, see 42 U.S.C. §§ 12181(7)(B), (C), (E), 12182; 28 C.F.R. § 36.104;

WHEREAS, as a result of negotiations between the Government and Nederlander following the initiation of the Government's investigation and prior to the entry of this Consent Decree, Nederlander has voluntarily made various architectural improvements to accessibility at the Theaters pursuant to the 1991 Standards, and the architectural improvements required herein shall therefore also be made pursuant to the 1991 Standards, except that the wheelchair and companion seating locations have been selected pursuant to the 2010 Standards;

WHEREAS, Nederlander enters into the Consent Decree without any admission of liability;

WHEREAS, Nederlander has cooperated fully with the Government's investigation and shall continue to work cooperatively with the Government to improve accessibility at the Theaters, and the parties agree that much of the relief set forth in this Consent Decree has already been accomplished by Nederlander in the course of the Government's investigation, and specifically that Nederlander has removed certain architectural barriers to access, made certain goods and services available to patrons with disabilities, established policies and procedures providing individuals with disabilities equal access to tickets, installed power automatic doors, retrofitted box offices, purchased and installed appropriate signage, created wheelchair seating locations, companion seats and aisle transfer seats whenever readily achievable, constructed accessible retail and bar counters, and provided accessible paths of travel and modified telephones, drinking fountains and restrooms in compliance with the agreed upon Exhibits; and

WHEREAS, Nederlander has consented to the entry of this Consent Decree without trial or adjudication of any issues of fact or law; and

WHEREAS, the Government and Nederlander agree that settlement of these matters without further litigation is in the public interest and that the entry of this Consent Decree is the most appropriate means of resolving these matters;

**NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED** as follows:

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action pursuant to 42 U.S.C. § 12188(b)(1)(B) and 42 U.S.C. §§ 1331 and 1345.

**II. APPLICATION AND PARTIES BOUND**

2. This Consent Decree applies to, and is binding upon, the Government and Nederlander. This agreement shall be binding on Nederlander, its agents and employees, and successors or assigns. The undersigned representatives of Nederlander certify that they are authorized by Nederlander to enter into and consent to the terms and conditions of the Consent Decree and to execute and legally bind Nederlander to it.

3. The Theaters are places of public accommodation within the meaning of 42 U.S.C. § 12181(7) because each one is a “theater, . . . or other place of exhibition or entertainment” within the meaning of 42 U.S.C. § 12181(7)(C) and 28 C.F.R. § 36.104. Nederlander operates a place of public accommodation as defined in 42 U.S.C. § 12181 and 28 C.F.R. § 36.104, and is thus a public accommodation.

4. This Consent Decree shall apply solely to the theater facilities at the Theaters.

Notwithstanding any term of this Consent Decree, specifically reserved and excluded from the scope and terms of this Consent Decree as to any entity or person, including the Government, is any claim arising under the ADA and the Department of Justice regulations implementing the ADA, pertaining to (a) the areas below stage; (b) the below or above-stage dressing and wardrobe room areas; and (c) the security and other office areas, including but not limited to any claims pertaining to the toilet facilities in these areas, or the routes to and connecting these areas, at each of the Theaters.

### **III. INJUNCTIVE RELIEF**

#### **A. ARCHITECTURAL MODIFICATIONS AND ACCOMMODATIONS**

5. Entrances: Nederlander shall maintain automatic accessible entry doors on an accessible entrance route at the main entrance that meets the requirements of Standards § 4.13 in each Theater. Nederlander shall maintain the doors in good working order, ensure that they are in operation every day a performance is scheduled, and repair any doors that are not in good working order within 3 days. Nederlander shall maintain signage in each Theater indicating the location of the automatic doors that meets the requirements of Standards § 4.1.6(1)(h). Nederlander shall maintain the thresholds at the automatic doors to meet the requirements of Standards § 4.13.8. Nederlander shall maintain the door closers to meet the requirements of Standards § 4.13.10. Nederlander shall maintain signage that meets the requirements of Standards § 4.1.2(7)(c) at the exterior of all inaccessible designated public entrances indicating the location of accessible entrances. In addition, Nederlander shall maintain and/or alter the entrances to each specific Theater as set forth in Exhibits 1A through 9A.

6. Restrooms: Nederlander shall (1) maintain and/or alter the unisex accessible restrooms and other restrooms in each specific theater, as set forth on Exhibits 1A through 9A, and 1B through 9B; (2) provide restroom accessibility information on its internet site for its theater patrons; and (3) maintain a wheelchair accessible unisex toilet room that meets the requirements of Standards §§ 4.16, 4.17, 4.19, 4.22 and 4.30 in each Theater to the extent set forth in Exhibits 1A through 9A, and 1B through 9B.

7. Drinking Fountains: Nederlander shall maintain at least one accessible drinking fountain or water cooler on the orchestra level of each Theater, where a water fountain is provided, that is compliant with the requirements of Standards §§ 4.15.2, 4.15.3, and 4.15.4, and shall supply cups with flat bottoms.

8. Food and Beverage Service: For any food and beverage concessions that are available in each of the Theaters to the general public, Nederlander shall either (a) provide waiter service for wheelchair users at their designated accessible seating locations during intermissions (at least ten minutes before the performance, a waiter shall ask wheelchair users at their designated accessible seating locations if any food or beverage is desired); or (b) provide concession facilities that meet the requirements of Standards § 7.2(2)(i), (ii), or (iii). In the event that Nederlander provides waiter service, Nederlander shall issue together with the ticket to wheelchair seating a written notice informing wheelchair users of the availability of waiter service during intermissions. In addition, in the event that Nederlander provides waiter service, Nederlander shall (a) provide notice on its Internet site informing wheelchair users of the availability of waiter service during intermissions; and (b) provide in the theater lobby signage that complies with Standards §§ 4.30.2 and 4.30.5 informing wheelchair users of the availability of waiter service during intermissions.

9. Ticket Windows: Nederlander shall maintain one pass-through or writing counter at a maximum height of 36 inches at one of the ticket windows in each Theater. Standards § 7.2. In the case of the Brooks Atkinson, Gershwin, Neil Simon, and Palace Theaters, Nederlander shall install one pass-through or writing counter at a maximum height of 36 inches at one of the ticket windows.

10. Egress Route: Nederlander shall maintain in each Theater a partially accessible egress route as set forth in Exhibits 1B through 9B.

11. Protruding Objects: Nederlander shall remove protruding objects or maintain cane-detectable barriers for protruding objects in compliance with Exhibits 1B through 9B.

12. Assistive Listening Systems: Nederlander shall provide and maintain Assistive Listening Systems (“ALS”) and receivers at each Theater for persons who are hard of hearing, pursuant to 28 C.F.R. § 36.303 and Standards § 4.33.7.

13. Signage: Nederlander shall provide and maintain Theater signage as set forth in Exhibits 1B through 9B.

14. Alarm Systems: To the extent Nederlander installs or modifies its alarm systems, it shall install a visual alarm system in non-seating areas. See Standards §§ 4.1.3(14) and 4.28.

## **B. WHEELCHAIR AND COMPANION SEATING LOCATIONS**

15. Nederlander shall provide or install and maintain wheelchair and companion seating locations at the Theaters as set forth in Exhibits 1C through 9C, in which all companion seating has been or will be located shoulder to shoulder with the wheelchair seating locations to the maximum extent feasible. Wheelchair seating locations that Nederlander is required to provide or install shall not be set on removable platforms, although Nederlander may install and maintain

permanent platforms to ensure level wheelchair seating locations. If Nederlander installs and maintains such a platform, Nederlander shall ensure that the front edge of such platform is raised to prevent a wheelchair from rolling forward.

16. All wheelchair and companion seating locations that Nederlander is required to provide or install, as set forth in Exhibits 1A through 9A, 1B through 9B, and 1C through 9C, shall adjoin an accessible route and comply with Standards §§ 4.33.2 and 4.5.3 to the extent set forth in Exhibits 1A through 9A, 1B through 9B, and 1C through 9C. It will be sufficient for Nederlander to provide one accessible or partially accessible means of egress for each seating location that Nederlander is required to provide or install pursuant to Exhibits 1A through 9A, 1B through 9B, and 1C through 9C.

17. Nederlander shall provide and maintain seats that are equipped with folding armrests (“designated aisle seats”) as set forth in Exhibits 1C through 9C.

#### **C. ALTERATIONS**

18. Nothing in this Consent Decree shall prevent Nederlander from making alterations to any Theater, as defined in 42 U.S.C. § 12183 and 28 C.F.R. § 36.402(b), in addition to those alterations required by the Consent Decree. Any such additional alterations not contemplated by this Consent Decree shall be made in accordance with the 2010 Standards, and any amendments thereto, and shall be accessible to the “maximum extent feasible,” as defined by 28 C.F.R. § 36.402(a).

#### **D. TICKET POLICIES AND PRICING**

19. Methods of Purchase: Nederlander shall provide for the availability of tickets for



wheelchair and companion seating locations and aisle transfer seating for all performances at the Theaters in the same manner as it makes tickets available to members of the general public through all methods and at all locations controlled by Nederlander and/or Nederlander's agents.

Nederlander shall direct each Theater to inform persons who specifically request wheelchair and companion seating on the basis of a disability of all of the available seating that has not been sold at that time, and direct that persons who specifically request wheelchair and companion seating are advised of the location of the seating, routes to the seating, and, where applicable, assistance provided to arrive at the seating. Nederlander shall direct Ticketmaster and its successors to inform persons who specifically request wheelchair and companion seating on the basis of a disability of all of the available seating that has not been sold at that time, provide such persons with their first stated choice of available seating locations, advise of any obstructions of the path of travel to the location, and refrain from encouraging or steering such persons to sit elsewhere.

20. Purchase of Multiple Tickets: Nederlander shall permit wheelchair users to purchase three companion seats for each performance (subject to availability) pursuant to 28 C.F.R. § 36.303. However, the price of only one of the companion seats will be governed by the pricing provisions of paragraph 22 of this Consent Decree. The additional companion seats, which shall be in proximity to the purchased wheelchair seating locations subject to availability, may be priced at the price of the tickets for conventional seats for persons without disabilities in the same row.

21. Release of Seating Locations: Designated accessible wheelchair and companion seating locations shall be the last seating to be released to patrons who do not request accessible seating. Nederlander shall be permitted to release the unsold wheelchair and companion seating locations for sale to the general public, including patrons who do not request accessible seating

locations, four days (96 hours) after all publicly available non-accessible seating (excluding unsold single seats) is sold out for a particular performance. In the event that all publicly available non-accessible seating locations (excluding unsold single seats) are sold out within four days (96 hours) of a scheduled performance, Nederlander shall be permitted to release the unsold wheelchair and companion seating locations for sale to the general public, including patrons who do not request accessible seating locations.

22. Ticket Pricing: The ticket pricing for wheelchair and companion seating locations in each Theater shall be as follows:

- a. For any performance at the Brooks Atkinson Theater: (A) three (3) wheelchair and three (3) companion seating locations shall be offered for sale to wheelchair users and their companions at the lowest ticket price at which tickets are offered for sale for conventional seats for the general public at the Theater; (B) two (2) wheelchair and two (2) companion seating locations shall be offered for sale to wheelchair users and their companions at the price at which adjacent seating locations in the same row are offered for sale for that performance; and (C) eleven (11) aisle transfer seating locations shall be offered for sale to people with disabilities at the price at which adjacent seating locations in the same row are offered for sale for that performance.
- b. For any performance at the Gershwin Theater: (A) four (4) wheelchair and four (4) companion seating locations shall be offered for sale to wheelchair users and their companions at the lowest ticket price at which tickets are offered for sale for conventional seats for the general public at the Theater; (B) four (4) wheelchair and four (4) companion seating locations shall be offered for sale to wheelchair users

and their companions at the price at which adjacent seating locations in the same row are offered for sale for that performance; and (C) eighteen (18) aisle transfer seating locations shall be offered for sale to people with disabilities at the price at which adjacent seating locations in the same row are offered for sale for that performance.

- c. For any performance at the Lunt-Fontanne Theater: (A) three (3) wheelchair and three (3) companion seating locations shall be offered for sale to wheelchair users and their companions at the lowest ticket price at which tickets are offered for sale for conventional seats for the general public at the Theater; (B) two (2) wheelchair and two (2) companion seating locations shall be offered for sale to wheelchair users and their companions at the price at which adjacent seating locations in the same row are offered for sale for that performance; and (C) fifteen (15) aisle transfer seating locations shall be offered for sale to people with disabilities at the price at which adjacent seating locations in the same row are offered for sale for that performance.
- d. For any performance at the Marquis Theater: (A) five (5) wheelchair and five (5) companion seating locations shall be offered for sale to wheelchair users and their companions at the lowest ticket price at which tickets are offered for sale for conventional seats for the general public at the Theater; (B) five (5) wheelchair and five (5) companion seating locations shall be offered for sale to wheelchair users and their companions at the price at which adjacent seating locations in the same row are offered for sale for that performance; and (C) sixteen (16) aisle transfer seating locations shall be offered for sale to people with disabilities at the price at

which adjacent seating locations in the same row are offered for sale for that performance.

- e. For any performance at the Minskoff Theater: (A) eight (8) wheelchair and eight (8) companion seating locations shall be offered for sale to wheelchair users and their companions at the lowest ticket price at which tickets are offered for sale for conventional seats for the general public at the Theater; (B) six (6) wheelchair and six (6) companion seating locations shall be offered for sale to wheelchair users and their companions at the price at which adjacent seating locations in the same row are offered for sale for that performance; and (C) seventeen (17) aisle transfer seating locations shall be offered for sale to people with disabilities at the price at which adjacent seating locations in the same row are offered for sale for that performance.
- f. For any performance at the Nederlander Theater: (A) three (3) wheelchair and three (3) companion seating locations shall be offered for sale to wheelchair users and their companions at the lowest ticket price at which tickets are offered for sale for conventional seats for the general public at the Theater; (B) three (3) wheelchair and three (3) companion seating locations shall be offered for sale to wheelchair users and their companions at the price at which adjacent seating locations in the same row are offered for sale for that performance; and (C) twelve (12) aisle transfer seating locations shall be offered for sale to people with disabilities at the price at which adjacent seating locations in the same row are offered for sale for that performance.
- g. For any performance at the Neil Simon Theater: (A) four (4) wheelchair and four

(4) companion seating locations shall be offered for sale to wheelchair users and their companions at the lowest ticket price at which tickets are offered for sale for conventional seats for the general public at the Theater; (B) three (3) wheelchair and three (3) companion seating locations shall be offered for sale to wheelchair users and their companions at the price at which adjacent seating locations in the same row are offered for sale for that performance; (C) fourteen (14) aisle transfer seating locations shall be offered for sale to people with disabilities at the price at which adjacent seating locations in the same row are offered for sale for that performance.

- h. For any performance at the Palace Theater: (A) nine (9) wheelchair and nine (9) companion seating locations shall be offered for sale to wheelchair users and their companions at the price at which adjacent seating locations in the same row are offered for sale for that performance; and (B) seventeen (17) aisle transfer seating locations shall be offered for sale to people with disabilities at the price at which adjacent seating locations in the same row are offered for sale for that performance.
- i. For any performance at the Rodgers Theater: (A) three (3) wheelchair and three (3) companion seating locations shall be offered for sale to wheelchair users and their companions at the lowest ticket price at which tickets are offered for sale for conventional seats for the general public at the Theater; (B) three (3) wheelchair and three (3) companion seating locations shall be offered for sale to wheelchair users and their companions at the price at which adjacent seating locations in the same row are offered for sale for that performance; and (C) fourteen (14) aisle transfer seating locations shall be offered for sale to people with disabilities at the

price at which adjacent seating locations in the same row are offered for sale for that performance.

**F. ADA COORDINATION AND PUBLICITY**

23. Nederlander shall publicize the availability, pricing, and locations of wheelchair seating, companion seating, and designated aisle seating in any Theater guides, seating charts and other materials published by Nederlander and on Nederlander's Internet site, and direct Ticketmaster or its successors to comply with the requirements of Paragraphs 19 through 22 of this Consent Decree.

**G. COMPLIANCE**

24. Nederlander shall implement this Consent Decree as follows:

- a. On or before December 31, 2014, Nederlander shall comply with paragraphs 5 through 23 of this Consent Decree with respect to three of the Theaters, and shall no later than January 31, 2015, submit to the Government a statement under penalty of perjury that it has complied with its obligations under paragraphs 5 through 23 of this Consent Decree with respect to three of the Theaters, setting forth the names of the Theaters.
- b. On or before June 30, 2015, Nederlander shall comply with paragraphs 5 through 23 of this Consent Decree with respect to six of the Theaters, and shall no later than July 31, 2015, submit to the Government a statement under penalty of perjury that it has complied with its obligations under paragraphs 5 through 23 of this Consent Decree with respect to six of the Theaters, setting forth the names of the Theaters.

- c. On or before December 31, 2015, Nederlander shall comply with paragraphs 5 through 23 of this Consent Decree with respect to all of the Theaters, and shall no later than January 31, 2016, submit to the Government a statement under penalty of perjury that it has complied with its obligations under paragraphs 5 through 23 of this Consent Decree with respect to all of the Theaters. In the event that Nederlander is prohibited from implementing this Consent Decree at a particular Theater due to contractual obligations with a show running as of the date of the execution of this Consent Decree, Nederlander shall implement this Consent Decree at that Theater within 90 days of such show completing its run.
- d. Nederlander shall comply with all remaining paragraphs upon the Effective Date of this Consent Decree.

#### **IV. RIGHT TO REVIEW COMPLIANCE**

25. Upon reasonable advance notice to Nederlander (through undersigned counsel), Nederlander shall permit the Government and any person acting on its behalf unrestricted access to the Theaters to review compliance with the ADA and this Consent Decree. If the Government finds that Nederlander has violated this Consent Decree or is otherwise not in full compliance with this Consent Decree, the United States will notify Nederlander in writing and seek to resolve the matter without judicial intervention before applying to the Court for relief. Nederlander shall provide to the Government on January 31, 2015, July 31, 2015, and January 31, 2016, a report on the number of wheelchair, aisle transfer, and companion seating locations sold (through Ticketmaster or its successor), specifying the dates such locations were sold, and the extent to which accessible seats were released to the general public pursuant to this Consent

Decree.

## **V. CIVIL PENALTY**

26. Pursuant to 42 U.S.C. § 12188(b)(2)(C)(i), Nederlander shall within thirty (30) days of entry of this Consent Decree pay to the Government a civil penalty in the amount of \$45,000.

## **VI. MISCELLANEOUS PROVISIONS**

27. Nothing contained in this Consent Decree is intended or shall be construed as a waiver by the Government of any right to institute any proceeding or action against Nederlander for violations of any statutes, rules or regulations administered by the Government, or to prevent or limit the rights of the Government to obtain relief under the ADA, or any other federal statutes or regulations, or on account of any violation of this Consent Decree or any other provision of law. However, subject to Nederlander's full compliance with the Consent Decree, the Government will not file a subsequent complaint against Nederlander pursuant to Title III of the ADA concerning the Theaters covered by this Consent Decree for the same violations identified in the Complaint herein, unless Nederlander fails to make alterations in compliance with this Consent Decree. In the event that Nederlander makes alterations that affect the location of wheelchair seating locations, Nederlander shall provide advance notice to the Government and Nederlander shall make any alterations consistent with Title III of the ADA.

28. This Consent Decree is a compromise of claims between the Government and Nederlander. It is based on the unique nature of these particular facilities and its provisions are not necessarily applicable to any other entities or facilities.



29. There shall be no modification of this Consent Decree without the written consent of the Government and Nederlander, and the approval of the Court.

30. This Consent Decree represents the entire agreement between the Government and Nederlander. No prior agreements, oral representations or statements shall be considered part of this Consent Decree.

31. This Court shall retain jurisdiction of this action for a period of three (3) years from the Effective Date, to enforce or modify the provisions of this Consent Decree, to resolve any dispute that arises under this Consent Decree, and to entertain any application and issue any orders (including, without limitation, orders directing the modification of policies, practices, and procedures, and orders requiring the removal of barriers to access) as may be necessary or appropriate for the effectuation of its terms. The parties shall discuss and attempt to negotiate a resolution of any dispute relating to the interpretation of this Consent Decree before bringing the matter to the Court's attention for resolution.

32. This Consent Decree may be executed in counterparts, each of which shall be an original and shall constitute one and the same instrument.

33. Exhibits 1A through 9A, 1B through 9B, and 1C through 9C to this Consent Decree are incorporated by reference into this Consent Decree and the terms set forth in those exhibits are part of this Consent Decree as though fully set forth in the Decree.

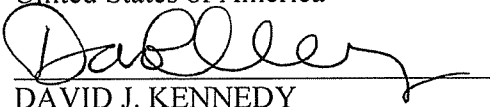
34. The Effective Date of this Consent Decree is the date that it is entered on the docket.

**COSTS AND ATTORNEY'S FEES**


35. Each party shall bear its own costs and attorney's fees in this action.

THE PARTIES HEREBY CONSENT to entry of the foregoing Consent Decree:


Dated: New York, New York  
January 17, 2014

PREET BHARARA  
United States Attorney for the  
Southern District of New York  
Attorney for Plaintiff  
United States of America  
By:   
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Dated: New York, New York  
January 9, 2014

THE NEDERLANDER ORGANIZATION, INC.  
By:   
NICHOLAS G. SCANDALIOS  
Executive Vice President  
~~THE~~ Nederlander Organization, Inc.  
1450 Broadway, 6<sup>th</sup> Floor  
New York, NY 10018  
Tel. No.: (212) 840-5577

SO ORDERED:

  
UNITED STATES DISTRICT JUDGE  
HON. KATHERINE POLK FAILLA

Dated: January 28, 2014  
New York, New York